

III. REMARKS

Status of the Claims

Claim 1 is amended. Claims 1-46 are presented for further consideration.

Applicant has amended the claim 1 to overcome the rejection based on 35USC112. No new subject matter is claimed. The amendment to claim1 is not intended to be limiting, is not made for reasons related to patentability, and should not be interpreted to raise issues of estoppel.

The Office Action

Applicant has considered the Examiner's comments set forth in the Office Action mailed April 14, 2009 and responds in detail below. Reconsideration of the application is respectfully requested in view of the amendments and the following remarks.

Claims 1-46 stand rejected under 35USC103(a) based on the combined teaching of the reference Boyer, et al, U.S. Patent No. 6,208,973 and the cited reference Dvorak, U.S. Publication No. 2002/0120472. This rejection is traversed on the following grounds:

The combined teaching of Boyer, and Dvorak does not render claims 1-46 obvious because it fails to teach or otherwise suggest each and every limitation of the claims. In a prima facie case for obviousness, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The claims must be considered as a whole. In addition there should be presented a rational basis for making the claimed combination. There should also be presented a motivation and a reasonable expectation of success of the combination, based on the prior art, without reference to the disclosure of this application. The examiner has failed to present a combination of teachings that teach or suggest the claimed subject matter as a whole, nor has a reasonable motivation for modifying the teachings been proposed.

Claim 1 states as follows:

"a provider server operatively established at the health care service provider, said provider server further comprising:

a provider storage medium for storing patient data and adjudication software received from a remote source;

a provider payment determination processor operatively associated with said storage medium to process patient data, using said payment adjudication software to obtain an adjudicated payment request;

a provider communication interface for receiving data and sending data including said payment request over an external communication link in a secure manner;"

Independent claim 22 has equivalent language in method form in which the adjudication is executed at the health care service provider based on data entered in the healthcare provider server memory.

The combined teaching of Boyer and Dvorak fails to teach these features. The Examiner relies on the teaching of Boyer as disclosing all of the claimed features of claim 1 except "a carrier communication interface for receiving data including said payment request and sending data over said external communication link in a secure manner". Applicant submits that this is a considerable understatement with respect to the deficiencies of the teaching of Boyer.

In Boyer, each service provider has a point of service terminal, similar to a credit card terminal, which is used to initiate a healthcare transaction (HCT). This point of service terminal is linked via the internet 14 to an Internet bank 16. These point of service terminals, therefore, are little more than a mechanism by which a patient can begin the process of paying for a health care service (see column 6, lines 24-39). Boyer indicates

that the payment system access card is a co-branded VISA card having a third party payor, i.e. the health care insurance carrier, as the payment partner (column 6, lines 40-48). Boyer describes the point of service terminal further at column 7, lines 11-15 as follows:

"In the preferred implementation of the invention, the point of service terminal includes an Internet connection 14 to a node containing an Internet merchant bank 16 which is to process the credit card transaction via a credit card network 18 in the conventional manner."

The point of service terminal of Boyer does not have the features stated clearly in claim 1 as indicated above. There is no provider storage medium for storing patient data or adjudication software and there is no payment determination processor which is adapted to process patient data, using said payment adjudication software to obtain an adjudicated payment request.

In Boyer adjudication, as defined in column 5, lines 51-55, is performed in adjudication Engine 22 which is located remotely from the point of service terminal 12. This is shown in figure 1, where the internet link 14 connects the point of service terminal only to the Internet bank 16. The adjudication engine 22 is only accessible by Internet bank 16.

In view of the fact that Dvorak relates to a universal healthcare record for establishing a centralized health care data base, the teaching of Dvorak fails to remedy the deficiencies of Boyer indicated above. There is nothing in Dvorak to suggest that the database may be resident on a computer at the point of service. The combined teaching therefore fails to support the rejection of claim 1 based on obviousness. These grounds apply equally to the rejected dependent claims, all of which, by dependency, have the limitations described in the independent claims 1 and 22.

Boyer is cited in the application as representative of the prior art and suffers from the general problems associated with attempts to use centralized processing centers for

health care claims processing. The processing of claim information in Boyer is described in column 14, lines 57-64 as follows:

"All claim information, including the results of adjudication, is preferably sent to the third party payor 24 in a nightly batch. Likewise, all updated eligibility information 26 is preferably submitted from the third party payor 24 to the adjudication engine 22 in batch."

This indicates that the instantaneous response to the HCT is optimistic at best because the credit card type transactions are not designed for the convenience of the service provider. They are designed to make a profit from a health care transaction. In the subject application, the adjudication process for a majority of health care claims can be handled at the health care service provider server. Payment to the health care provider will be faster and the patient will know immediately what the patient's share of the transaction will be. The system of Boyer sets up a new entity in the guise of adjudication engine 22. This will necessarily add costs to the transaction, especially if this entity is a for-profit enterprise. The system of the subject application uses resources that are currently available and communication links are minimized to facilitate communication between the health care service provider and the healthcare insurer.

The Examiner therefore has failed to present a prima facie case of obviousness. The cited reference Dvorak fails to remedy the deficiencies of the primary reference Boyer. These grounds apply equally to the rejected dependent claims, all of which, by dependency, have the limitations described in the independent claims.

The Examiner continues to characterize the disclosure of Boyer with an exaggerated content with respect to the features stated in the dependent claims. This occurs continuously throughout paragraphs 8-28 of the office action. With respect to claim 2, for example, the Examiner states that Boyer teaches a portable device with storage capability and said patient data and adjudication software is downloaded to the provider storage medium by reading said data from said device. The cobranded credit card of Boyer is a credit card that is enhanced by patient and insurance plan identification data,

nothing more. The credit card of Boyer cannot function to download patient data and adjudication software to the point of service terminal and there is no suggestion that such a function would be desirable.

The Examiner repeatedly cites excerpts of the disclosure of Boyer, which do not contain the teaching that is indicated. For example, in paragraph 8 it is indicated that the adjudication software is downloaded to the provider storage medium. There is no provider storage medium in the system of Boyer. As stated above, the point of service terminal of Boyer is only a dumb credit card processor without any capability to store data and software that would allow adjudication.

Paragraph 13 of the Office Action is a particularly blatant mischaracterization of the content of the teaching of Boyer. The Examiner states that Boyer teaches processing of treatment plans in which expert review is required including an expert review processor according to claim 7. A careful review of the cited reference at column 7, lines 10-67 indicates that there is no mention of expert review, but only an adjudication process that results in an "AST" (adjudicated settlement transaction). The text at column 8, lines 27-55 relates to a policy database 32 in which the rules of coverage are available. The text at column 14, lines 54-67 relates to the adjudication process. There is no mention of expert review in these references either. Applicant respectfully requests that the Examiner fully explain how "policy database" reads upon "claims processing" and "clinical pathways" reads upon "treatment plan". Clinical pathways refer to links to previous HCT and the state of each HCT, see column 8, lines 43-47.

The Examiner repeats the citation of column 7, lines 10-67 in paragraph 16, yet there is no reference to coordination of benefits, as contained in claim 10.

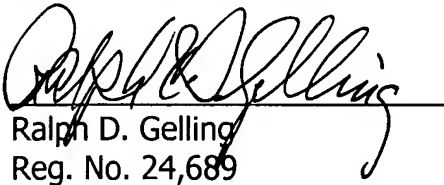
The Examiner has failed to present for prima facie obviousness at all levels of the stated rejections. For the reasons stated above by example, Applicant traverses all of the

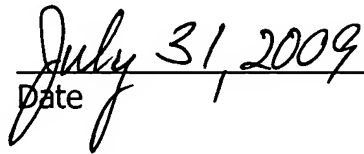
rejections of claims 8-28. The citation of generic statements in Boyer does not relieve the Examiner from presenting a rational basis for the obviousness rejection. The Examiner is requested to reconsider the characterizations contained in paragraphs 8-28 of the office action and withdraw them from consideration.

For all of the above reasons, it is respectfully submitted that all of the claims now present in the application are novel and patentable over the prior art of record, and are in proper form for allowance. Accordingly, favorable reconsideration and allowance is respectfully requested. Should any unresolved issues remain, the Examiner is invited to call Applicants' attorney at the telephone number indicated below.

A one month extension of time to respond is hereby requested. Payment is authorized according to the attached Credit Card Payment Form

Respectfully submitted,


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